

REMARKS

The present communication is responsive to the Office Action mailed January 29, 2008. A Petition for a three month extension of time is submitted herewith, extending the period of reply from April 29, 2008 up to and including July 29, 2008.

Claims 1-6, 9, 11-16 and 20-26 are pending in the present application. Claim 1 has been amended, and no claims have been canceled or added herein. Therefore, claims 1-6, 9, 11-16 and 20-26 remain pending in the present application.

Applicants would like to thank the Examiner for indicating that claims 4, 23, 25, and 26 include allowable subject matter. Specifically, the Examiner objected to such claims as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of the limitations of the base and any intervening claims. In the present response, Applicants present arguments in support of the allowability of claims 1 and 9. Therefore, claims 4 and 25 remain dependent upon claim 1 and claims 23 and 26 remain dependent upon claim 9. Nonetheless, Applicants reserve the right to present such claims in independent form at a later date.

Further in the Action, the Examiner rejected claims 1-6, 20-22, and 25 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner asserted that claim 1, as previously presented, recited that at least two prongs extend from the distal end of the first elongated section and also that at least two prongs extend from the distal end of the second elongated section. However, there is an additional clause with respect to the second elongated section reciting "the *first* elongated section and the at least two prongs having an interior

side having at least two laterally-spaced grooves disposed thereon." The word "*first*" should in fact be "*second*" in this clause, and Applicants have amended claim 1 accordingly. This amendment should clear up any confusion that the Examiner may have regarding how many grooves and prongs the first elongate section has, and thusly the Applicants respectfully request the withdrawal of the § 112 rejections noted above.

Further in the Action, the Examiner rejected claims 1-3, 5, 9, 11-15, 20, 21 and 24 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,159,215 to Urbahns et al. ("*Urbahns*") in view of U.S. Pat. No. 5,571,109 to Bertagnoli ("*Bertagnoli*") and claims 6, 16, and 22 under 35 U.S.C. 103(a) as being unpatentable over *Urbahns* in view of *Bertagnoli* and further in view of U.S. Pat. No. 6,063,088 to Winslow ("*Winslow*"). With respect to claims 1-3, 5, 9, 11-15, 20, 21 and 24, the Examiner asserted *Urbahns* discloses an instrument with two elongate sections 512, 618, 514 and 620 respectively having interior grooves the entire length along with the intervertebral engagement portion and a transverse ridge or stop 518, 624, 626 on an exterior surface. However, the Examiner admitted that *Urbahns* fails to disclose the distal ends of the elongate sections having two prongs and concave interior sides. The Examiner went on to opine that *Bertagnoli* teaches a vertebral instrument with elongate ramps or guides 11, 12 having interior grooves for a spinal implant 60 and that there can be two prongs 115, 116 at the ends of each of the elongate section or guide. The Examiner asserted that it would have been obvious to one of ordinary skill in the art to form the extension as prongs as taught by *Bertagnoli* on the end ramps of the instrument of *Urbahns* such that it provides more flexibility at the ends of the insertion tool by reducing the structural profile of the ramp engagement members to the prongs.

Applicants respectfully assert the Examiner has not made a *prima facie* case of obviousness using the cited references. Simply put, *Bertagnoli* does not have prongs that extend from the distal end of an elongate section, and especially prongs that include laterally-spaced grooves thereon. In contrast to the Examiner's assertions outlined above, elements 114 and 115 of *Bertagnoli* are spreading elements and 116 is a wedge. See Fig. 11 and col. 13, ll. 17-20. Spreading elements 114 and 115 extend from rod 113 which is adapted to slide longitudinally in a guide passage 112 on the opposite side of the instrument 10 from guide grooves 14 and 15 (grooves 14, 15 shown in Fig. 1A). Spreading elements 114 act as a distraction mechanism for the instrument and there is no indication anywhere in the specification of *Bertagnoli* that they are configured to extend from the distal end of rails 11, 12 containing grooves 14 and 15 respectively, such that the grooves also extend along the spreading elements. Thus, the Examiner has failed to provide a reference having prongs extending from an elongate section, wherein the elongate sections themselves have grooves, as is required by independent claims 1 and 9.

As such, even the combination of *Urbahns* and *Bertagnoli* does not teach each and every one of the limitations of independent claims 1 and 9, and Applicants respectfully submit that such claims are not obvious in light of those references. Claims 2-6, 20-22, and 25 properly depend from independent claim 1 and claims 11-16, 23-24, and 26 properly depend from independent claim 9 are therefore also unobvious for at least the same reasons that claims 1 and 9 are. In light of all of the above, Applicants request allowance of each and everyone of the currently pending claims.


As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 29, 2008

Respectfully submitted,

By   
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